IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3067 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RUPABHAI MANUBHAI

Appearance:

1. Special Civil Application No. 3067 of 2002

MR KAMAL TRIVEDI Ld A.A.G. with MR KP RAVAL A.G.P. for Petitioner No. 1

MS VINITA S VINAYAK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 27/08/2004

ORAL JUDGEMENT

1,0, The petitioner by way of this petition has challenged the judgment and award of the Labour Court

dated 4th December, 2000 in Reference [L.C.S.] No. 67 of 1994, whereby the Labour Court has directed the petitioner State to reinstate the respondent-workman on his original post with 25% backwages.

2.0. The short facts as they emerge from the record of the petition are that the respondent-workman at the relevant time was working as Rojamdar on a mothly salary of Rs.700=00 per month. It is the say of the respondent-workman that he had worked continuously for six years. The respondent further submitted that vide order dated 8th March, 1992, he was relieved from the service without any notice pay. It is further the say of the respondent-workman that while relieving him, no seniority list is maintained and the persons juniors to him are retained in service by the petitioner State.

2.1. In view of that the respondent-workman raised industrial dispute, which was ultimately, referred to the Labour Court for adjudication being Reference [L.C.S.] No. 67/1993, whereby the Labour Court directed the petitioner to reinstate the respondent-workman on his original post with 25% backwages. Hence, this petition.

3.0. Heard Mr. Kamal Trivedi learned Additional Advocate General for the petitioner and Ms. Vinita Vinayak learned advocate appearing for the respondent.

3.1. Mr. Trivedi, learned Additional Advocate General submitted that the Labour Court has not considered some of the documentary evidence and in view of the Full Bench decision in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat reported in 2004 (2) G.L.H. 302, the question whether the respondent-workman is entitled for reinstatement or continuity of service where the Units satisfy triple test, as envisaged in para 29 of the said decision, are required to be ascertained by the Labour Court. He submitted that the Labour Court has also not under taken the inquiry into the nature of the work undertaken by the department in a particular venture, the type of agency through which the work is done, the duties of the employees and matter connected therewith.

3.2. Looking to the peculiar facts and circumstances of the case, I find force in the submission of the learned advocate for the petitioner. Under the circumstances it would be appropriate to remand the matter to the Labour Court to decide the issue afresh after taking into consideration the aforesaid aspects.

4.0 In view of the above, the petition is partly allowed. The award of the Labour Court dated 4th December, 2000 in Reference [L.C.S.] No. 67 of 1993 is required to be quashed and set aside.

4.1. Therefore, in the interest of justice, the following order is passed.

4.2. The award of the Labour Court dated 4th December, 2000 in Reference [L.C.S.] No. 67 of 1993 is quashed and set aside. The matter is remanded to the Labour Court for fresh decision. The Labour Court shall decide the issue afresh keeping in mind the ratio laid down by the Full Bench in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat (supra) on or before 31st December, 2004. In the meantime. the petitioner will not relieve the respondent-workman on the ground that the order of the Labour Court is quashed and set aside. However, it will be open for the petitioner to take disciplinary proceedings if any misconduct is committed by the respondent-workman.

[K.S. JHAVERI, J.]

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